

U.S. Department of Homeland Security
Freedom of Information Act Branch
601 South 12th Street
Arlington, VA 20598-6020



Transportation
Security
Administration

October 25, 2019

3600.1

Case Number: 2020-TSAP-00001

Sai
MuckRock News
DEPT MR 79158
411A Highland Ave
Somerville, MA 02144-2516

Dear Sai:

On behalf of the Transportation Security Administration (TSA), I am responding to your letter dated September 11, 2019, and received on October 1, 2019, in which you are appealing TSA's denial of expedited processing for part of your FOIA request dated August 22, 2019.

Under the FOIA administrative appeal provisions (5 U.S.C. 552(a)(6)(A)), a requester has the right to administratively appeal any adverse determination an agency takes on the requester's FOIA request. Adverse determinations, or final actions, include such actions as denials of records either in whole or in part; no-records responses; denials of requests for fee waivers, and denials of requests for expedited processing. I have reviewed your appeal, and, for the reasons outlined below, I uphold the agency's denial of your request for expedited processing.

First, your request for expedited processing does not meet the procedural requirements, which include submitting a statement that is certified to be true and correct. 6 C.F.R. § 5.5(e)(3). Since your email does not include such a certification, your request for expedited processing is deficient and must be denied.

Even if your request satisfied the procedural requirements, however, it would still be deficient. Pursuant to the FOIA, a request may qualify for expedited processing if the requester demonstrates a compelling need. *See* 5 U.S.C. § 552(a)(6)(E). Under DHS regulations, a request will be processed on an expedited basis when it involves: 1) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; 2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; 3) the loss of substantial due process rights; or 4) a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. 6 C.F.R. § 5.5(e).

Your appeal for expedited processing does not implicate "an imminent threat to the life or physical safety of an individual," and thus fails to qualify under the first basis for receiving expedited processing.

To qualify for expedited processing under the second basis, a requester must demonstrate two elements: 1) an urgency to inform the public about a federal activity; and 2) that the requester is a person primarily engaged in disseminating information. First, you have failed to demonstrate an urgency to inform the public about the activity that is the subject matter of the request. You reference a Congressional hearing regarding Quiet Skies, but you do not explain how this creates an urgent need for public information. Likewise, you reference a Privacy Impact Assessment (PIA) issued by TSA, but you do not explain how that creates an urgent need to inform the public about a federal activity. Indeed, since a Congressional hearing and the issuance of a PIA are both examples of dissemination of information to the public, these references tend to cut against any urgent need. Second, you have not demonstrated that you are a person primarily engaged in disseminating information so you also fail to satisfy the second basis for consideration of expedited processing. In reaching this decision I have researched your company, Fiat Fiendum, Inc. (FF) that you referenced in your FOIA request via <https://www.patreon.com/fiatfiendum>. My review shows that you describe yourself as being engaged in a variety of activities, including creating code, legal reform and government transparency. You have not demonstrated in your request or in your online activity that you are primarily engaged in disseminating information. Furthermore, to the extent that any of your online postings may have been referenced by recognized news media outlets, such action on their part does not support your claim to be a person primarily engaged in disseminating information.

Regarding the third basis, your assertions that you “have due process rights to not have my standing undermined by false testimony,” and that the alleged “[TSA Administrator’s] perjury, if credited by the courts, would deprive me of standing under your litigations counsel’s theory of 49 U.S.C. 46110(a)” do not support your claim that there is a loss of substantial due process rights. It is not sufficient for a requester merely to allege that the requested records are “needed” in connection with some judicial or administrative proceeding; the immediate use of the FOIA must be shown to be critical to the preservation of a substantial right. Therefore, your request does not qualify for expedited processing under that basis.

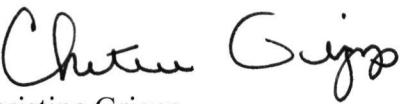
Finally, with respect to the fourth basis, your references to news stories and a DHS OIG report and your conclusory statement regarding “widespread media interest” fall short of demonstrating the level and intensity of media interest necessary to compel expedited processing under this basis. You also allude to testimony by the TSA Administrator at Congressional hearings as raising questions about the government’s integrity. The TSA Administrator and other senior leaders often testify before Congress on many agency matters. Your unsubstantiated allegations of perjury with regard to such hearings fail to demonstrate how the referenced news stories raise possible questions about the government’s integrity which affect public confidence.

Accordingly, because your request for expedited processing is procedurally deficient and fails to meet any bases for such treatment under the FOIA and applicable DHS regulations, your request is denied.

Because of this, I affirm the FOIA Branch’s determination to deny your request for expedited processing. We are currently working through a significant backlog and, absent satisfaction of the factors that justify expedited processing, will not move your request ahead of others who

have submitted requests prior to yours. We will continue to process cases on a first-in, first-out basis and will respond to your request as soon as possible.

Sincerely,


Christine Griggs
Assistant Administrator for Civil Rights & Liberties,
Ombudsman and Traveler Engagement